There was clearly more than sufficient independent evidence connecting each of the appellants with the two killings and implicating each of them and which confirms in some material particular not only the evidence that the crimes have been committed but also that the appellants committed them.

It was also argued on behalf of the second appellant that there was insufficient evidence to prove beyond a reasonable doubt that the criminal acts which resulted in the deaths of the two deceased persons were committed by him and the first appellant in furtherance of a pre-arranged plan to carry out those criminal acts. In our opinion this ground is also without substance. There were two of three persons who set out that afternoon to commit robbery at the feathers factory armed with two knives knowing it was necessary to be so armed to carry out their planned object. The trial judges found on the evidence that they entered the factory building each armed with a knife. These facts coupled with the number and extent of the injuries which were inflicted on the two victims by two knives constituted in our view sufficient evidence on which the trial judges could properly find, as they did, that the appellants entered the factory building with the common intention to rob and with the common intention to use the knife each of them carried, if necessary, to inflict such bodily injury on any person offering resistance as would be sufficient in the ordinary course of nature to cause death.

Having regard to the views we have expressed, we propose to deal very briefly with the submissions on behalf of both appellants that the statements made by them to the police and before two magistrates should not have been admitted in evidence by the trial judges. The substance of the arguments on behalf of both appellants was that having regard to the evidence before the trial judges at the trial within a trial they ought to have refused to admit these statements in evidence on the grounds set out in the proviso to section 121(5) of the Criminal Procedure Code which reads thus: —

"Provided that the court may in its discretion refuse to admit such statement or allow it to be used as aforesaid —

(a) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person, proceeding from a person in authority and sufficient in the opinion of the court, to give such person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him; or

(b) in the case of a statement made by such person after his arrest if it appears to the court that the statement was not made and recorded substantially in compliance with the provisions of the rules set out in Schedule E to this Code".

We are not persuaded that the trial judges on the evidence before them exercised their discretion wrongfully or in any manner which was contrary to law. The issue as to admissibility was fully canvassed before them at the trial within a trial which lasted several days. In those circumstances, this court as an appellate tribunal, not having the benefit of seeing and hearing the witnesses called to testify on this issue, is precluded from interfering with the trial court's exercise of its discretionary powers, unless convinced that there was no proper or sufficient evidence to support the trial court's decision or unless it is satisfied that the trial court acted on wrong principles.

Accordingly, the appeals of both appellants are dismissed.

Appeals dismissed.

Solicitors: *Tan, Rajah & Cheah; Ironside & de Souza.*

TAY CHENG TECK v. TROPICAL PRODUCE CO. PTE. LTD.

[O.C.J. (Chua J) June 28, 1971]

[Singapore — Suit No. 672 of 1969]

Factories — Failure to fence dangerous part of machinery — Absolute duty — Contributory negligence — Liability at common law — Factories Ordinance, 1958, ss. 22(1) and 59.

Negligence — Breach of statutory duty — Dangerous parts of machinery — Failure to fence — Contributory negligence — Liability at common law.

The plaintiff sued the defendants for damages for personal injuries at common law and also for breach of statutory duty to fence a dangerous part of machinery. He was employed at the defendants' factory to mill rubber and it was his duty to feed unmilled rubber to two revolving rollers which were part of the machine which was in the defendants' factory. While in the course of his duties, the plaintiff's right hand got caught between the rollers and was crushed. It was alleged that there was a failure to provide and maintain a safe system of work and also that the dangerous part of the machinery was not fenced which was contrary to section 22(1) of the Factories Ordinance, 1958.

Held: (1) the plaintiff had been taught to mill the rubber and had been properly instructed in the safe use of the machine. The plaintiff himself was negligent and this was how the injury was caused to him. His claim based on common law liability therefore failed;

(2) the duty imposed by section 22(1) of the Factories Ordinance, 1958, is an absolute duty and the defendants had contravened the section;

(3) the plaintiff was guilty of contributory negligence and his liability was therefore assessed at 50%.

Observations on requirements of section 22(1) of the Factories Ordinance, 1958, which is similar to section 14(1) of the English Factories Act, 1937.

Case referred to:-

(1) *John Summers & Sons Ltd.* v. *Frost* [1955] 1 All E.R. 870 at p. 872.

SUIT.

H. E. Cashin for the plaintiff.

Freddie Yin for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiff was employed by the defendants at the defendants' factory to mill rubber. It was the plaintiff's duty as such employee to feed unmilled rubber to two revolving rollers which were part of the machine which was in the defendants' factory. On the 14th December, 1968, while the plaintiff was in the course of his duties the plaintiff's right hand got caught between the rollers and was crushed.

The plaintiff brought the present action against the defendants for damages for personal injuries, the statement of claim alleging that "the system which the defendants knew or ought to have known was used by the plaintiff for doing the said work was for the plaintiff to use his hands to feed the blocks or sheets of rubber to the running in point of the two rollers and when the rubber did not go between the rollers to use his hands to force it between the rollers". It is further alleged in the statement of claim that

"the said system was known or should have been known to the defendants to be unsafe in that there was a risk that the plaintiff's hands might be caught between the rollers and thereby crushed. The said system was rendered even more unsafe in that the rubber was subjected to water during the operation of feeding it to the rollers and an operator's hands were liable to slip when forcing the rubber between the rollers and/or the rubber block or sheet was liable to be gripped first on one side of its width and thus cause the operator's hands on that side to slip forward to the nip of the rollers. Under a safe system, the plaintiff or the machine would have been provided with an implement or device for placing the rubber at the running in points of the rollers and/or the machine would have been provided with a guard which prevented the operator's hands from reaching the nip of the rollers."

Further or alternatively the plaintiff alleged that the accident was caused by the defendants' breach of statutory duty in "failing to fence securely, or at all, the rollers or the nip of the rollers of the said machine, a dangerous part of machinery, when the same were not in such a position or such construction as to be safe to the plaintiff employed or working on the premises as it would if securely fenced, — contrary to section 22(1) of the said Ordinance. (Factories Ordinance, 1958.)"

The defendants put in a defence denying both negligence and breach of statutory duty. The defendants in their defence alleged that "the duties of the plaintiff consisted merely of feeding unmilled rubber to rollers which were left in constant revolution by a central control" and "all that the plaintiff had to do was to place the unmilled rubber in such a way as to cause the revolving rollers to grip the unmilled rubber and thereafter to leave it alone and let it pass through the revolving rollers", and "if the unmilled rubber could not be gripped by the revolving rollers or where having been gripped but at some stage it could not pass through, all that the plaintiff had to do was to apply a little pressure to the unmilled rubber and if this still did not work, to reject the unmilled rubber which sometimes falls off by itself or to take away with a slight tug."

The defendants denied that the system of work was unsafe and alleged that the plaintiff was himself negligent. The defendants also raised an alternative plea of contributory negligence.

The evidence of the plaintiff was shortly this. Prior to the 11th December, 1967, he was working at the Aik Hoe Rubber Factory as an apprentice milling rubber. On the 11th December, 1967, he started work with the defendants doing the same job. That day the supervisor of the defendants, Tan Kai Sin, who recommended him to the job, demonstrated to him how to do the work. The supervisor picked up a piece of rubber from the ground by the thick end with two hands, then pushed the thinner end into the rollers of the machine, after the thin end had got into the rollers he used the palm of his hands and pushed the thick end until it came to the end. The supervisor repeated this operation two or three times and then asked him to mill the rubber while the supervisor watched. After watching him for a while the supervisor left to do his rounds and he carried on with his job. The supervisor came round periodically to watch him do his job. On the 12th December he was milling rubber and the supervisor came round periodically to supervise his work.

On the 14th December he met with the accident. He said:

"I picked up the rubber by the thick end and fed the thin end into the rollers. Once the rubber had been gripped by the rollers I then pushed the rubber with the palm of my hands. Slightly more than ½ the rubber had been fed through the rollers. When the left side of the rubber got stuck the rubber on the right hand side went in fast. The rubber on the left side came.... The left side got stuck, the right continued into the roller. I do not know how my fingers of the right hand got into the rollers. At that time I was exerting pressure with my right hand.

The machine I was operating, there was a switch at the top of the roller, what I mean is that there is a bar above the rollers as can be seen in photo D1, when the bar is pulled down towards me then the rollers would stop. It was to be used in case of emergency. If the rubber got stuck this emergency switch was not to be used but I was to use the other switch a brake which is on right of the photo D1: if I pull the brake the roller stops. Then the supervisor would come and attend to the machine.

I was instructed by the supervisor for 5 to 10 minutes. He told me all this, about the brake and the switch, at that time. On day of accident one side of rubber got stuck and the right side went on. I had no opportunity to pull the brake as it was on the right. I got puzzled and I did not know if I pulled the switch or someone pulled it. When the left side got caught I had no time to pull the brake but I had time to pull the switch before my right hand was caught. My right hand was caught. I had no time to either pull the brake or pull down the switch."

Tan Kai Sin (D.W. 1), the defendants' supervisor, said in evidence:

"On the first day of his job I demonstrated the work for the plaintiff to see. At first he came he did not know how to work, then I demonstrated to him with pieces of rubber; I put the rubber into the milling machine until it is gripped and it went through, then I put the second piece of rubber and again it went through. The piece of rubber was of this width, 1½ ft. to 2 ft., and this thick, about 3 inches and the other end was about 4 inches thick.

I fed the rubber into the milling machine. I carried the rubber and feed it to the machine and I let go of the rubber and stood there until it went through; then I picked up the rubber which had gone through from under the machine and placed it at the side. Then I feed in the second piece of rubber and let go the rubber, stood by until it went through, then I pulled the rubber from underneath the machine and placed it at the side. That morning I put in 7 or 8 such pieces.

(*Yin:* It has been suggested by the plaintiff that when you demonstrated what you did was you picked the piece of rubber and put it between the nip of the rollers and then with the palm of your hands you forced the rubber while it was going through the rollers until the end. Did you do that?)

No, I did not do that.

(*Yin:* Why did you say you did not do that?)

If you do that there is danger that your fingers would be caught by the rollers.

Sometimes some part of the rubber does not go through the rollers, if that happens it is taken out and thrown away.

To Court: It is taken out from the rollers and thrown away. The rubber is not stuck there, it could be taken away.

There is a safety disc somewhere inside here (points to right of the rollers in photo D1), which cannot be seen. When the rubber get stuck the safety disc is broken and a new one is replaced. When the safety disc is broken the machine would stop.

If part of the rubber could not go through the rollers it is thrown away. If the rubber that could not go through does not drop then it is stuck in the rollers, then a new disc is placed and a fresh piece of rubber is replaced.

(*Yin:* Plaintiff has said that you have taught him that if some part of the rubber cannot pass through the rollers he has to use his hands and force it right through.)

I did not teach him in that manner.

The pieces of rubber that dropped off or could not go through the rollers they are put away by the side for re-cutting.

(*Yin:* The plaintiff also told the court you also instructed him as part of his work to take these pieces of dropped-off rubber and force them through the machine.)

No, I did not instruct him.

After I had watched the plaintiff I asked him if he could do the work and he said 'Yes' and I was satisfied that he could do the work.

After that I left the plaintiff and went to do my work. I came back to plaintiff again to see how he was going on. I came back to see plaintiff 7 or 8 times. Each time I came to see plaintiff I was satisfied with his work, I did not see plaintiff push the rubber through the rollers with his hands on any of the occasions that I came to see him.

On the 13th December 1967 the plaintiff was again milling rubber. I went round to see him work and I was satisfied he was doing the right thing.

On 14th December 1967 the plaintiff commenced work at about 7 a.m. I went round to supervise his work; he was milling the rubber the correct way.

At 9.25 a.m. that morning an accident happened to the plaintiff."

The defendants called Ong Chin Hock (D.W. 3) who works in the defendants' factory milling rubber. He said:

"When I joined defendants' factory I was under the supervision of D.W. 1. On my first day of work D.W. 1 demonstrated to me how the work was to be done. D.W. 1 took a piece of rubber and fit it into the roller, then the rubber goes through the roller, I had to stand away from the rollers and let the rubber go through. After that I picked another piece of rubber and fit it in and go through the same process. D.W. 1 did not tell me that I had to push the rubber with both hands right to the end.

At times as the rubber is going through some part of the rubber would not go through that was due to the safety disc being broken; the machine would stop and I had to replace a new disc. Sometimes part of the rubber would go through and some part would not go through, in that case the part that would not go through would drop off by itself. The drop off pieces are put aside for re-cutting.

In my experience in other factories the same system used in feeding the machine. I have never used force to push the rubber through the machine."

In cross-examination he said:

"I have milled block rubber. When it grips into the roller I let go my hand. Yes I hold on to the rubber but until ¼ of the piece had gone into the roller then I take my hands away, and water would splash out so I stood away. The more experienced worker would feed the rubber more before taking the hands off. Now I am experienced it is quite alright for me to guide the rubber through with my hands. Yes that day there were other people milling block rubber as well; yes they would be experienced rubber millers, yes they would be guiding the rubber through."

In re-examination he said:

"If the rubber does not get through I push it a little with both hands. For an experienced person he pushes the rubber right to the end."

The defendants also called on another employee, Cher Ngak Poon (D.W. 4), and he gave evidence as to the method of milling rubber demonstrated by Tan Kai Sin when he first joined the factory and his evidence was similar to that of Ong Chin Hock. In cross-examination he said:

"I know D.W. 3 (Ong Chin Hock). He is an experienced miller; he is a friend of mine.

(*Cashin:* D.W. 3 said for experienced millers once they put rubber in the rollers they guide it through with their hands right the way through.)

Not necessary. I do not do it.

(*Cashin:* He also says occasionally you have to use a little force to put it in.)

Then the rollers are tightened and the rubber would drop off. That is what I do.

If they liked that way they do it but I don't do it. Not true we all push the rubber."

I visited the factory of the defendants with the parties before the plaintiff was cross-examined. In the course of cross-examination the plaintiff said:

"Yes I visited the factory yesterday afternoon; yes I saw a man milling the same type of rubber as I was milling on day of my accident. Yes I saw that the man after putting in the thin end of the rubber and after it had been gripped by the rollers he stood away from the machine. Yes I saw that some piece of rubber which could not go through the rollers broke off and dropped to the floor. The supervisor taught me a different way. I don't understand why the man I saw yesterday did what he did but I was taught a different way and I followed the supervisor's way. Yes that way was what I described to the court yesterday.

Yes in Aik Hoe I would stand aside and wait, and rubber that could not go through would break away and drop down. Yes the man I saw yesterday at the defendant company was doing what was done at Aik Hoe. Not true the supervisor showed me what was done at Aik Hoe."

After considering the evidence before me I have come to the conclusion that the defendants' supervisor, Tan Kai Sin, was speaking the truth. I find that the plaintiff was taught to mill the rubber in the way described by Tan Kai Sin and that the plaintiff was properly instructed in the safe use of this machine. I find that the plaintiff himself was negligent and that was how his fingers were caught in the nip of the rollers. The plaintiff was negligent in that he failed to pay proper attention to his work and in forcing the rubber between the rollers knowing it was unsafe to do so.

The claim of the plaintiff based on the common law liability of the defendants therefore fails.

I now come to deal with the claim of the plaintiff based on an alleged breach of statutory duty by the defendants.

The breach of statutory duty alleged is the failure to comply with the requirements of section 22(1) of the Factories Ordinance, 1958. That sub-section is as follows:

"Every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced.

Provided that, in so far as the safety of a dangerous part of any machinery cannot by reason of the nature of the operation be secured by means of a fixed guard, the requirements of this sub-section shall be deemed to have been complied with if a device is provided which automatically prevents the operator from coming into contact with that part."

The first question that arises is whether or not the nip formed by the two rollers in which the plaintiff caught his hand is a dangerous part of the machinery in the defendants' factory. There can be no doubt that the answer is in the affirmative.

It is argued on behalf of the defendants that the dangerous part of the machinery could not be fenced in any way so that the machine could be worked practically. It was pointed out that that was the view of the Inspector of Factories who had been round to inspect the machinery and the inspector has not required anything to be done.

Section 22(1) of the Factories Ordinance, 1958, is similar to section 14(1) of the English Factories Act, 1937.

Viscount Simonds in the House of Lords case of *John Summers & Sons Ltd.* v. *Frost.*[1]

"My Lords, section 14 of the Factories Act, 1937, and its predecessor section 10 of the Factory and Workshop Act, 1901, have on many occasions been discussed in the courts, and I think that their true construction is not in doubt. In particular, I think it is clear that the obligation imposed by the section to fence securely every dangerous part of any machinery, except as in the section mentioned and subject to its proviso, is an absolute obligation. And by that, I mean that it is not to be qualified by such words as 'so far as practicable' or 'so long as it can be fenced consistently with its being used for the purpose for which it was intended' or similar words. I come to this conclusion for the following reasons which will be elaborated by my noble and learned friend.

First, it appears to me to be an illegitimate method of interpretation of a statute, whose dominant purpose is to protect the workman, to introduce by implication words of which the effect must be to reduce that protection. Secondly, where it has been thought desirable to introduce such qualifying words, the legislature has found no difficulty in doing so. This can be found both in other statutes, of which I need give only one out of many possible examples, viz., 60 & 61 Vict. c. 60, which, in providing for the fencing of chaff-cutting machines uses the words 'so far as is reasonably practicable and consistent with the due and efficient working of the machine' and also in other sections of the statute now under consideration. For instance, in different forms, qualifying words are to be found in section 18, section 19, and section 22 and, no doubt, in many other sections. Thirdly, it was decided as long ago as 1919 in *Davies* v. *Thomas Owen & Co.* [1919] 2 K.B. 39), that the obligation imposed by the comparable section 10 of the Factory and Workshop Act, 1901, was absolute and that, if the result of a machine being securely fenced was that it would not remain commercially practicable or mechanically possible, that did not affect the obligation: the statute would, in effect, prohibit its use. This had been for seventeen years the unchallenged law when the Act of 1937 was passed and that Act, by section 14, substantially repeated the former section. It would be contrary to well established principles of construction to give a different meaning to the new section; see *Barras* v. *Aberdeen Steam Trawling & Fishing Co. Ltd.* ([1933] A.C. 402). Fourthly, the proviso to section 14(1) affords a strong indication that the substantive part of it imposes an absolute obligation: for, unless its effect is absolutely to prevent the operator from coming into contact with a dangerous part of the machine, there would be little meaning in the provision of an alternative which has just that effect. Fifthly, the absolute obligation imposed by section 14(1) is subject to the regulation-making power of the Minister under section 60. I do not think it necessary to decide whether the Act of 1901 contained a similar power. But, in my opinion, it is clear that section 60 of the Act of 1937 enables the Minister by special regulation to modify the absolute obligation of section 14 in regard to such classes or descriptions of factory as he thinks fit. Reading the section as a whole, I do not regard the words "subject to the provisions of this Act" as qualifying the power of modification, but rather as looking forward to section 129. There is thus a consistency in the Act — first a provision for the safety of the workman which is absolute, and secondly a recognition that such a provision may render a particular industrial process practically impossible, and therefore, a power in the Minister, if he thinks fit, and subject always to the power of Parliament to annual the regulation, to relax rigour of the absolute obligation.

For these reasons, I think that the obligation to 'securely fence' the machinery here in question is unambiguously absolute and will remain absolute unless and until the Minister makes appropriate regulations."

I entirely and respectfully agree with the opinion of Viscount Simonds.

Section 59 of the Factories Ordinance, 1958, gives the Minister power to make special regulations similar to the powers given to the Minister under section 60 of the English Act.

I am of the opinion that the duty imposed by section 22(1) of the Factories Ordinance, 1958, is an absolute duty and accordingly, at the time of the accident, the defendants were contravening section 22(1) of the Ordinance.

The next question to consider is whether the plaintiff was guilty of contributory negligence. As I have said, if the plaintiff had used the machine as he was taught to do this accident would not have happened at all and of course the plaintiff was guilty of contributory negligence. I assess the plaintiff's liability at 50%.

I now come to deal with the quantum of damages.

The plaintiff sustained a severe crushing injury of his right hand. He was admitted in the orthopaedic unit of the Outram Road General Hospital on 14th December, 1967, and was discharged from the ward on 19th January, 1968. His fingers were reconstructed and stabilized. Subsequently amputation was done on the index and ring fingers. The middle finger survived but developed an infection. He was re-admitted on the 1st March, 1968 for a minor surgical procedure involving the removal of a small piece of infected bone from the middle finger and he was discharged on 6th March, 1968. The wounds of the right hand have healed leaving behind the middle finger and a little finger which has a flexion deformity and is practically useless. The only use is in the thumb and the middle finger which is only good for pinching. He is unable to carry heavy weights.

For pain and suffering and disability I assess damages at $15,000.

The plaintiff is unable to do his former occupation as a rubber miller. He is at present employed as an attendant at the National Museum at a salary of $145

per month. If he had continued to be a rubber miller his earnings would have been between $175 and $180 per month. There is every likelihood that the plaintiff would continue working at the Museum. I award the sum of $5,000 for loss of future earnings.

Special damage has been agreed at $33.

In the result there will be judgment for the plaintiff in the sum of $10,016 and costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Tan, Rajah & Cheah.*

POH KIM KANG & ORS. v. ISHAK BIN LAMBIK & ANOR.

[O.C.J. (Winslow J.) August 5, 1971]

[Singapore — Originating Summons No. 187 of 1969]

Land Laws — Mortgage — Purchaser mortgaging property to vendor to secure balance of purchase price — Whether a loan — Whether evidence satisfactory.

Moneylenders — Vendor securing balance of purchase price by mortgage — Whether a moneylender — Moneylenders Ordinance, 1959.

On March 14, 1966, the plaintiffs entered into a contract with the first defendant to purchase certain property. The purchase price was $251,379.39, but the first defendant was only able to pay $25,138 being the 10 per cent deposit, plus another $72,871.33. The sum of $160,000 (*sic*) remained outstanding, being the balance of the purchase price. The plaintiffs agreed to take a mortgage of the property from the first defendant for the said sum of $160,000. On June 7, 1966, the plaintiffs conveyed the property to the first defendant, and on the same day, the property was mortgaged by the first defendant to the plaintiffs to secure the sum of $160,000. Interest was paid on the mortgage at $1,600 *per mensem*. It was not disputed on the facts that no money actually passed between the mortgagor and the mortgagee before the execution of the mortgage. The first defendant subsequently executed a deed of trust on August 8, 1966, stating that he was holding the mortgaged property in trust for the second defendants. The trust deed was registered in the Registry of Deeds on June 6, 1967. The plaintiffs by way of originating summons asked the defendants as persons entitled to redeem the equity of redemption in the statutory mortgage to provide certain reliefs affecting monies recoverable under the mortgage which were claimed by the plaintiffs as mortgagees and as persons interested in such relief. On a preliminary objection raised by the second defendants that the mortgage was void because the transaction was one within the meaning of the Moneylenders Ordinance, 1959,

Held: on the evidence before the court there was no loan at all as between the plaintiffs and first defendants. The question whether the plaintiff were carrying on the business of moneylenders cannot arise unless a finding is made by the court that there was a loan in the first instance.

Cases referred to:-

(1) *Robinson's Settlement-Gant* v. *Hobbs* (1912) 28 T.L.R. 298.

(2) *Levy* v. *Dott* (1919) 35 T.L.R. 518.

(3) *Lapin* v. *Abigail* (1930) 44 C.L.R. 166.

(4) *Bull* v. *Simpson* (1915) 15 S.R. (N.S.W.) 365 at p. 370.

(5) *Winter* v. *Lord Anson* [1814-23] All E.R. Rep. 503; 6 L.J.O.S. Ch. 7; 38 E.R. 658.

(6) *Bond* v. *Kent* 23 E.R. 782.

(7) *Temperance Loan Fund Ltd.* v. *Rose* [1932] 2 K.B. 522.

(8) *Eldridge and Morris* v. *Taylor* [1931] 2 K.B. 416.

(9) *Lyle Ltd.* v. *Chappell* [1932] 1 K.B. 691.

(10) *Rabone* v. *Deane & Anor.* (1915) 20 C.L.R. 636.

SUMMONS.

Poh Guan Hock for the plaintiffs.

James Loh for the second defendants.

Cur. Adv. Vult.

Winslow J.: This originating summons came on for hearing before me on 27th February 1970 requiring the defendants as persons entitled to redeem the equity of redemption in statutory mortgage dated 7th June, 1966 (Registered in Volume 1611 No. 32) to provide certain reliefs affecting monies recoverable under the mortgage which were claimed by the plaintiffs as mortgagees and as persons interested in such reliefs.

At the hearing, a preliminary objection was raised by Mr. James Loh, counsel for the second defendants, to the proceedings, on the ground that the said mortgage was void for reason that the said transaction was one within the meaning of the Moneylenders Ordinance 1959.

The undisputed facts are largely set out in Ex. AF and are as follows: —

"1. The plaintiffs before 7.6.1966 were the owners of the property — Conveyance 11.2.1964 — registered in Volume 1507 No. 185.

2. The plaintiffs and the 1st defendant entered into a contract to sell and purchase the mortgaged property on 14.3.1966. Completion date was fixed for 14.4.1966.

3. The price was $251,379.39.

4. The 1st defendant was able to pay $25,138 — 10% deposit and $72,871.33 and was $160,000 short (*sic*).

5. Arrangements were made to get the loan of $160,000 from Seng Giap & Co. Ltd. (registered moneylenders). However, the plaintiffs agreed to take a mortgage of the property from the 1st defendant for $160,000, the balance of the purchase price.

6. The property was conveyed by the plaintiffs to the 1st defendant on 7.6.1966 and on the same day the property was mortgaged by the 1st defendant to the plaintiffs to secure the said $160,000.

7. Interest has been paid from execution of mortgage to 7.3.1967 at $1,600/- *per mensem*.

8. The 1st defendant executed a deed of trust on 8.8.1966 stating that he was holding the mortgaged property in trust for the 2nd defendants. This deed was registered on 5.6.1967."

After being part-heard, further argument on the summons continued on 16th October 1970. At the end of the hearing I reserved judgment as this was the first time that such a novel point had been raised on facts such as these, despite my inclination at the conclusion of the hearing that there was little or no substance in this preliminary point.

It is undoubtedly true that cases like *Robinson's Settlement-Gant* v. *Hobbs*[1] and *Levy* v. *Dott*[2] establish that a loan on mortgage by an unregistered moneylender who carries on business as such is a moneylending transaction by a moneylender within the meaning of relevant legislation like our Moneylenders Ordinance, although certain conflicting views have been expressed in Australia on whether a person lending